

KEYWORD: Guideline B

DIGEST: In analyzing whether an applicant’s foreign connections raise a concern of heightened risk, a Judge should consider the totality of the record evidence. Pertinent factors include the nature of the foreign government, its intelligence gathering history, its human rights record, and the extent to which its interests are adverse to the U.S. Applicant’s frequent contact with his foreign relatives, his having come to the attention of Chinese authorities due to his political activities, China’s history of exploiting its citizens for intelligence purposes, and its status as an aggressive collector of U.S. information are sufficient to establish a heightened risk. We find no reason to disturb the Judge’s conclusion that Applicant’s circumstances raise security concerns under Guideline B. Adverse decision affirmed.

CASENO: 16-02435.a1

DATE: 05/15/2018

DATE: May 15, 2018

In Re:	)	
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	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 15, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 8, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

### **The Judge’s Findings of Fact and Analysis**

Applicant was born, raised, and educated in China. He came to the U.S. in the late 1980s and became a naturalized citizen in the early 2000s. He has siblings who are citizens and residents of China, whom he contacts every other month. Applicant has a sibling who lives in another country but who owns a home in China. His mother-in-law is also a citizen and resident of China. Applicant has traveled to China five times since he came to the U.S. Applicant has a substantial net worth in the U.S. While he lived in China, Applicant became involved in pro-democracy advocacy. He came to the attention of Chinese authorities who, after Applicant had left the country, came to his place of employment to detain him. Applicant did not return to China for several years. China is a totalitarian state that exerts pressure on citizens by such means as house arrest and forced disappearances. It is a strategic competitor of the U.S. and is an aggressive collector of U.S. information and technology. Chinese intelligence services often try to exploit Chinese citizens or those with ties to China in hopes of acquiring trade secrets electronically.

The Judge concluded that Applicant’s foreign relatives render him vulnerable to coercion. Although Applicant has lived in the U.S. for many years, he concluded that China’s history of oppressing its citizens and its attempts to acquire U.S. information preclude a favorable determination. The Judge noted especially evidence that Applicant had already come to the attention of Chinese authorities. Though commending Applicant for his courage and his many ties within the U.S., the Judge ultimately concluded that he had not met his burden of persuasion.

### **Discussion**

Applicant contends that his foreign relatives should not automatically raise a security concern. Rather, such a concern should arise only when foreign contacts pose a heightened risk of exploitation, inducement, pressure, or coercion. The Directive presumes that there is a nexus, or a rational connection, between admitted or proved circumstances under any of the Guidelines and an applicant’s eligibility for access to classified information. *See, e.g.*, ISCR Case No. 15-08842 at 2 (App. Bd. Feb. 14, 2017). In making a determination as to whether an applicant’s foreign connections raise a concern such as a heightened risk of coercion, a Judge should consider the totality of the record evidence. Pertinent factors include the nature of the foreign government, its

intelligence gathering history, its human rights record, and the extent to which its interests are adverse to the U.S. *See, e.g.*, ISCR Case No.15-00528 at 3 (App. Bd. Mar. 13, 2017).

In the case under consideration, Applicant's frequent contact with his foreign relatives, his having come to the attention of Chinese authorities due to his political activities, China's history of exploiting its citizens for intelligence purposes, and its status as an aggressive collector of U.S. information are sufficient to establish a heightened risk that Applicant's foreign connections could become a means through which he could be subjected to pressure. We find no reason to disturb the Judge's conclusion that Applicant's circumstances raise security concerns under Guideline B.

Applicant challenges some of the Judge's findings. He argues, for example, that Chinese authorities came looking for him only a week after he left the country, rather than the six weeks that the Judge had found. He also claims that the authorities discovered him through a journal maintained by another pro-democracy advocate rather than during an office raid. Even if the Judge erred as Applicant contends, it did not likely affect the overall outcome of the case. Therefore, any such errors are harmless. The Judge's material findings of security concern are based upon substantial evidence. *Id.* Applicant has cited to no harmful error in the Judge's findings of fact.

The balance of Applicant's appeal brief includes arguments that the Judge did not consider all of the evidence and that the Judge's weighing of the evidence was arbitrary, capricious, or contrary to law. In Foreign Influence cases, the nature of the foreign government involved and the intelligence-gathering history of that government are among the important considerations that provide context for the other record evidence and must be brought to bear on the Judge's ultimate conclusions in the case. The country's human rights record is another important consideration. *See, e.g.*, ISCR Case No. 15-00528 at 3 (App. Bd. Mar. 13, 2017). After examining the Decision as a whole, we conclude that Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

**Order**

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board